

Application No.: 09/736,023  
Examiner: Darren W. ARK  
Art Unit: 3643

### **REMARKS**

Reconsideration of the present application is requested on the basis of the following particulars.

1. **Status of the Claims**

In the outstanding Office Action, claims 1-3, 5, 7-13, 15, 23-33, 35, 38, 39, 42, 43 and 46 presently stand allowed.

Claims 4, 6, 14, 16, 18-22, 34, 36, 37, 40 and 41 would be allowed if rewritten to overcome objections and rejections of the claims based on 35 U.S.C. 112, 2<sup>nd</sup> paragraph.

Claims 17 and 45 stand rejected in view of U.S. Patent 3,162,573 (Geary).

2. **In the Claims**

As shown above in the List of Current Claims, the claims of the present application have been amended for the reasons discussed below. Acceptance of the claim amendments and new claims 47 and 48 is respectfully requested in the next Action.

a. **Claim Objections**

Claims 4, 15, 16, 18-22, 24, 28, 34 and 44 presently stand objected to on the basis of informalities identified in the Action. In the amendment of such claims, the informalities identified in the Action have been corrected.

Accordingly, removal of the objection to the claims is requested.

b. **Rejection Under 35 U.S.C. 112, 2<sup>nd</sup> Paragraph**

Claims 4, 6, 14, 16, 18-22, 34, 34, 36, 37, 40, 41 and 44 presently stand rejected under 35 U.S.C. 112, 2<sup>nd</sup> paragraph. In order to overcome this rejection, the rejected claims have been amended accordingly.

More specifically, claim 4 has been amended to recite "of the zone of or within the housing" as suggested in the Action. The term "preferably" has been removed from the claim in its entirety and the claim now terminates prior to the original recitation of "preferably." A new claim, which will be described below, positively recites the subject matter removed from claim 4.

Claim 6 has been amended to recite "the pesticide" as suggested in the Action.

Claim 16 has been amended to recite "pesticidal" instead of "pesticide."

Claim 30 has been amended to recite "a pesticide and behavior modifying chemical" so as to maintain consistency between claims 36, 37, 40, 41 and 44. Moreover, claim 30 has been amended to recite "at least one agent."

Claim 34 has been amended similarly to claim 6 and a new claim has been provided to recite the subject matter removed therefrom.

Claim 40 has been amended to provide proper antecedent basis for "a pesticide or behavior modifying chemical."

In view of the amendments to these claims, it is respectfully submitted that claims 1-46 comply with 35 U.S.C. 112, 2<sup>nd</sup> paragraph. Accordingly, withdrawal of this rejection is respectfully requested.

c. Other Claim Amendments and New Claims

In view of the amendments to claims 4 and 34, new claims 47 and 48 are provided which recite that the surface in an area of the zone of or within the housing is inclined to the horizontal. Obviously, in view of the original recitation of the subject

matter of new claims 47 and 48 in claims 4 and 34, support for the new claims is clearly found in the present application.

Throughout the claims the spelling of the term "behaviour" has been modified to "behavior" to maintain consistency throughout the claims of the present application.

It will be noted that claims 41 and 42 have been amended to recite that the pesticide may be "selected from a group consisting" of the pesticides recited therein. This amendment was provided to more clearly recite the subject matter of these claims by avoid use of alternative language in the claims. Moreover, claim 30 was amended to recite "at least one" agent which finds support in the present application in referring to the different pesticides or behavior modifying chemicals that may be used in the pesticidal composition of the claimed invention.

Acceptance of these claim amendments is respectfully requested in the next Action.

3. Rejection of Claims 17 and 45 as Being Anticipated By U.S. Patent 3,162,573 (Geary)

Claims 17 and 45 presently stand rejected in view of the disclosures of Geary. This rejection is respectfully traversed on the basis that Geary fails to disclose or suggest the pesticidal composition of claim 17. Claim 17 is thus patentable and claim 45 is patentable based on its dependency from claim 17.

Claim 17 basically recites a pesticidal composition in a particulate form that includes particles that comprise magnetic material in admixture with a pesticide or behavior modifying chemical or particles of a magnetic material coated with a pesticide or behavior modifying chemical.

In the Action, the Examiner has rejected claim 17 on the basis that Geary discloses a pesticidal composition including pellets that comprise a magnetic

material that includes a colloidal iron powder which is capable of being acted upon by a magnet. The magnetic material is in admixture with a pesticide or behavior modifying chemical, or particles of a magnetic material coated with a pesticide or behavior modifying chemical which are placed within a resin.

In observing the teachings of Geary, the preparation of the composition is described as a combination of the biologically active material with the resin forming constituents to form an occlusion or fusion of the active principle with the resin to form a clathrate compound. This combination resembles a sieve or sponge in structure with the molecules of the active biological fitted into the interspaces of the polymer.

In reference to example 4 (described in col. 4), a composition is described as a hard-glass like product which is water-insoluble but which is effective as a pesticide. In example 3, it is described that the product of example 2 is ground into a fine powder and added to a sugar solution. It will be noted, however, that the powder/sugar solution is in the form of a clathrate or occlusion.

In example 15, the reason for using a magnetic powder is to formulate pellets which can be ingested by ruminant animals. These pellets are subsequently trapped in the reticulum of the stomach of the animals because they cannot be decomposed by bacterial action on the fined particles which can then pass further to the gut. The hardware diseases that are referred in the disclosure of Geary, and by which the method seeks to alleviate while at the same time finding a slow release substrate for medicinal compounds, is caused by pieces of wire etc. ingested by animals and which become trapper in the reticulum. Thus, the pellets act as magnets which trap small pieces of metal on the surface thereby preventing them from entering the gut epithelium.

In view of the disclosure of Geary, the metallic powder described therein is used simply as a means of providing magnetic properties to the pellet as a whole

Application No.: 09/736,023  
Examiner: Darren W. ARK  
Art Unit: 3643

after it has been swallowed by the animal and is not a means of anchoring particles to the external surface of an arthropod or insect, as described in the present application. On the other hand, it is readily evident that the composition described by Geary could not be used for the application described in the present application.

Thus, it is clear that the disclosure of Geary does teach or suggest a pesticidal composition as described in the present application. This is particularly evident by the description of Geary in reference to example 15 wherein the magnetic material in the composition does not exert a pesticidal effect and instead is merely provided to control the hardware disease described above. It will be further pointed out that the magnetic particles are in the form of a clathrate, which as a formation, would never be capable of acting as a pesticide in accordance with the teachings of the present application.

In view of the above-observations on the teachings of Geary, it is apparent that Geary fails to disclose or suggest a pesticidal composition wherein the magnetic particles are in admixture with a pesticide or behavior modifying chemicals, or that the magnetic particles are coated with pesticide or behavior modifying chemicals.

Accordingly, Applicants respectfully request withdrawal of this rejection.

Application No.: 09/736,023  
Examiner: Darren W. ARK  
Art Unit: 3643

4. Conclusion

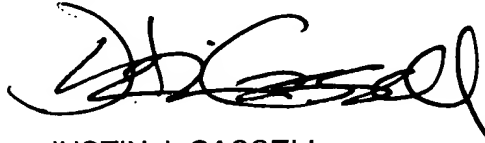
In view of the amendments to the claims, and further in view of the foregoing remarks, it is respectfully submitted that the application is in condition for allowance. Accordingly, it is respectfully requested that claims 1-48 be allowed and the application be passed to issue.

If any issues remain that may be resolved by a telephone or facsimile communication with the Applicants' Attorney, the Examiner is invited to contact the undersigned at the numbers shown below.

BACON & THOMAS, PLLC  
625 Slaters Lane, Fourth Floor  
Alexandria, Virginia 22314-1176  
Phone: (703) 683-0500

Date: April 1, 2004

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Justin J. Cassell', written over a horizontal line.

JUSTIN J. CASSELL  
Attorney for Applicant  
Registration No. 46,205